

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



LIANOS V ORDER OF AHEPA NSW INC [2020] NSWCA 193

Court of Appeal, Supreme Court of New South Wales, Macfarlan JA, Meagher JA, Emmett AJA, 26 August 2020

This is an appeal from the decision [In the matter of Order of AHEPA NSW Inc.](#) [2019] NSWSC 1329.

Key words: Unincorporated Association, New South Wales, Association Rules

1. Three members of the Order of AHEPA NSW Incorporated (AHEPA NSW) brought the proceedings. “AHEPA” stands for Australasian (or, sometimes, Australian) Hellenic Educational Progressive Association. The three members of AHEPA NSW contended that before one is entitled to be a member of AHEPA NSW, one must be a member of a NSW “Chapter” of an unincorporated association, The Order of AHEPA Australasia, itself recently incorporated as AHEPA Australia Limited.
2. Disputes arose as to whether meetings considering some property matters were validly held, proper notice given, whether certain persons were members and entitled to cast a vote, and whether AHEPA NSW was subject to the governance of the overarching federal body, The Order of AHEPA Australasia. There were two court proceedings that settled these issues so that valid meetings could be convened to progress decisions about the property development.
3. The court decided that:
 - a) The membership rules of AHEPA NSW permitted the addition of 124 members (who were not members of a chapter) before the meeting on 13 November 2018 at which a new constitution and by-laws were adopted.
 - b) Some members of AHEPA NSW entitled to vote at the meeting were not given notice of it, although most attended anyway. Even if those members had voted against the resolutions, the new constitution and by-laws would have been adopted. An order under section 1332(4) of the *Corporations Act* was appropriate to validate the meeting decisions.
 - c) It followed that the new constitution and by-laws were validly adopted and registered by NSW Commissioner for Fair Trading, the secretary and treasurer of AHEPA NSW were validly endorsed on 18 February 2019, and the resolutions passed at a meeting on 28 February 2019 were also valid.
4. The issues before the Court of Appeal were:

- (a) The meaning of “unincorporated association” for the purpose of a rule which provided that a person would be “entitled” to membership of the Association if they held financial membership of the “unincorporated association” and agreed to be bound by the code of ethics and rules of the “unincorporated association”; and
- (b) Whether the above rule and another that provided that a person would be “qualified” for membership if they were nominated and approved under a specified procedure constituted cumulative requirements for membership of the Association or alternative pathways?
5. The lower Court determined that the reference to “unincorporated association” was originally treated as being to the unincorporated form of the Association, but over time had come to refer to membership of a chapter. The Court found that the bodies documented in AHEPA Australia’s constitution, including the chapters and the “Order of AHEPA in the State of New South Wales”, were not subordinate to AHEPA Australia.
6. The three members argued that that membership of the “unincorporated association” referred to membership of a chapter located in NSW, and because chapters were subordinate units within AHEPA Australia, membership of a chapter equated to membership of AHEPA Australia. Further, if the membership requirements were cumulative, then out of the 369 individuals who voted, 127 would be disenfranchised, as they were not members of a chapter in NSW. Had those 127 persons not voted, the requisite majority for amendment of the 2018 Rules of the Association to adopt the 2018 Constitution of the Association may very well not have been satisfied.
7. The Appeal Court examined the history and constitutions of the various bodies in detail and came to a different conclusion to the lower Court. This was that the association was to be characterised as a subordinate part of the broader association. Further, even if the words “unincorporated association” were construed as a reference to the Association prior to its incorporation, such an entity should not be regarded as separate and independent from AHEPA Australia.
8. The Appeal Court found that cumulative membership requirements were consistent with the textual and non-textual aspects of the Association’s Rules. The rule only made logical sense if the requirements were cumulative in terms of other provisions and procedures in the rules.

IMPLICATIONS



This matter was made complicated because the rules and constitutions of the various bodies had not been amended for clarity over the years, when new bodies and organisations were added to its structure. Had there been clarity about the relationships between the bodies in the various constitutional documents, the parties may not have fallen into error.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/nsw/NSWCA/2020/193.html>

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